

NORTH CAROLINA  
DURHAM COUNTY

LEASE OF NON-RESIDENTIAL PROPERTY

This Lease is made as of the 1<sup>st</sup> day of March, 2015, between the City of Durham ("**Landlord**") and The Durham Bicycle Cooperative ("**Tenant**").

1. GRANT. The Landlord hereby leases to the Tenant, and the Tenant accepts, a portion of certain parcel of land known as Duke Park, located at 106 W. Knox Street, Durham, NC 27701 (parcel #109272). The Leased Premises, consisting of approximately .53 acres and including the existing concrete masonry unit garage, office building, and one pole barn, all of which are located on the northwest corner of Duke Park, as shown on Exhibit A attached hereto.

2. TERM. This Lease is for a period of Ten (10) years and shall begin March 1, 2015 and expire March 31, 2025.

3. RENT. DEPOSIT.

(a) The Tenant shall pay to the Landlord as rent the sum of \$1.00 per year due at lease inception.

(b) Tenant is not required to pay a security deposit.

4. PURPOSE. The Tenant may use the property to provide a public recreation opportunity, specifically a Bicycle Cooperative providing recreational services. The property may not be used for any other purpose.

5. RETURNED CHECKS. Tenant shall pay thirty dollars (\$30.00) for each check returned for insufficient funds or because the drawer had no account at the bank.

6. EXTENSION OF LEASE TERM. N/A

7. TERMINATION OF LEASE TERM. Part "a" of Section 23  
(TERMINATION, CASUALTY, AND EMINENT DOMAIN)

  X   applies             does not apply to this Lease.

8. CONDITION OF PREMISES AND REPAIRS. (a) The Tenant having inspected the Premises, has agreed that Tenant will renovate all three (3) units as shown as Exhibit B, in a good and workmanlike manner following ADA requirements with proper permits and inspections at Tenant's expense. Tenant will supply to the Landlord all approved plans and specifications from Architects and adhere to the City of Durham's building codes and regulations. The Tenant shall immediately notify the Landlord of damage to the Premises, all other need for repairs, and situations that might reasonably be expected to result in damage. This Lease does not give Tenant any authority either to obligate the Landlord to pay any third party for any labor or materials or to suffer liens to be placed on the Premises. The Landlord will be allowed onto the Premises to document renovations during various stages of construction until the renovation is complete. The Landlord will assume no expenses or repairs during the lease term, unless it is deemed a force majeure. (b) Tenant shall compensate the Landlord for damage to the Premises caused by all negligent, willful, or intentional acts and omissions by the Tenants and any of Tenant's agents, invitees, licensees, and contractors. Tenant shall not allow any "Environmental Contamination" (defined in Section 21 INDEMNIFICATION)) below to be released onto the Premises by itself or its agents, contractors, invitees, or licensees, and Tenant shall cleanup said releases if they occur. (c) **Tenant shall make all other repairs and replacements needed to keep the building and its systems (including the HVAC, plumbing, electrical wiring, appliances, painting, glass, and all equipment) in good condition and state of repair**

9. USE AND CARE OF THE PREMISES. The Premises shall not be used in any way that exposes the improvements to any unreasonable risk of damage from fire. Without written permission from the Landlord, the Tenant shall not permit or keep any kerosene or gasoline on the Premises unless in properly constructed tanks attached to motor vehicles. The Tenant shall keep the Premises in a presentable condition, including clean of trash, garbage, shrubbery and the lawn, if any, mowed. The Tenant shall not use or allow the use of any illegal drugs or alcohol on the Premises. No trees or shrubbery shall be removed without first obtaining written permission from the Landlord. The Tenant shall not violate any lawful requirements of all public authorities regarding use of the Premises, including applicable zoning and building codes. No animals may be kept on the Premises without the Landlord's written consent.

10. ALTERATIONS. FIXTURES. Tenant may, prior to the expiration of the term of this Lease, remove from the Premises any fixtures that Tenant may have installed, whether affixed or not; provided, however, that any damages done to the Premises by the installation of such fixture or by such removal will be repaired at Tenant's expense. Any fixtures remaining in the Premises after the expiration of the term shall be the property of the Landlord. Any improvements and repairs to the Premises, unless removed pursuant to this section, shall inure to and be to the benefit of the Landlord. The Landlord is responsible for adding a chain link from the existing fence at Acadia Street running east approximately 177.28 sq. ft., behind the garage and connecting to an existing fence on the

west side near the creek and it will not have a gate. **The Landlord will move and/or deconstruct the Caretaker Cottage and several small buildings behind the Caretaker Cottage by December 31, 2015.**

11. KEYS. The Tenant shall not add or change any locks without the Landlord's Written consent. At the end of the term, the Tenant shall give to the Landlord all keys that Tenant has for the Premises, including any keys made from Landlord's keys.

12. UTILITIES. The Tenant shall pay all proper charges for all utilities, including oil, gas, electricity, water, sewer, garbage pickup, cable, and telephone.

13. USE OF SECURITY DEPOSIT. Intentionally left blank.

14. LATE PAYMENTS. If the full rental payment is not received by the Landlord on or before the tenth day of the month due, Tenants shall pay a late fee of five percent (5%) of the rental payment or fifteen dollars (\$15.00), whichever is greater.

15. POSSESSION. The Landlord shall not be liable for its failure to deliver possession because of a cause beyond its reasonable control, including holdover by a previous tenant. However, the rent shall be prorated to reduce the rent for the period during which the Landlord fails to deliver possession.

16. ASSIGNMENT AND SUBLETTING. The Tenant may neither assign nor sublet either any rights in, or any part of, the Premises without the written consent of the Landlord, which shall not be unreasonably withheld. The Tenant shall remain liable to the Landlord under this Lease regardless of assignments or subleases.

17. TAXES AND INSURANCE. During the term of this lease, the Landlord shall pay all taxes and assessments imposed on the Premises. Any insurance that the Landlord may obtain on the Premises is for the benefit of the Landlord, not the benefit of the Tenant. Landlord shall not provide either any liability insurance to protect Tenant or insurance against loss or damage to Tenant's property. Tenant shall maintain insurance on the Premises with the following requirements:

- A. Commercial General Liability – Combined single limit of no less than \$1,000,000.00 each occurrence and \$2,000,000.000 aggregate. Coverage shall not contain any endorsement(s) excluding nor limiting Product/Completed Operations, Contractual Liability or Cross Liability.
- B. Additional Insured – Tenant agrees to endorse the City as an Additional Insured on the Commercial General Liability. The Additional Insured shall read “City of Durham as its interest may appear”.

- C. Certificate of Insurance – Tenant agrees to provide City of Durham a Certificate of Insurance evidencing that all coverage's limits and endorsements required herein are maintained and in full force and effect, and Certificates of Insurance shall provide a minimum thirty (30) day endeavor to notify, when available, by Tenant's Insurer. If Tenant receives a non-renewal or cancellation notice from an insurance carrier affording coverage required herein, or receives notice that coverage no longer complies with the insurance requirements herein, Tenant agrees to notify the City within five (5) business days with a copy of the non-renewal or cancellation notice, or written specifics as to which coverage is no longer in compliance. The Certificate Holder address should read:

City of Durham  
General Services Department  
Real Estate Division  
101 City Hall Plaza  
Durham, NC 27701

18. ACCESS. The Landlord shall keep keys to the Premises. The Landlord and its agents and contractors may enter the Premises, including the interior, in case of emergency or with the consent of the Tenants. Without limiting its rights under the preceding sentence, the parties agree that the Landlord and its agents and contractors may enter the Premises, excluding the interior, during daylight hours to make surveys, repairs, improvements, inspections, and do other work. The City reserves the right to enter the Premises in order to remove the existing Caretaker Cottage along with three additional storage buildings by December 31, 2015.

During the last ten weeks of the term and until the Premises have been rented beyond the term or sold, Tenant shall permit Landlord to show the Premises, including the interior, to prospective tenants or purchasers, from 8:00 AM – 4:30 PM, Monday – Friday. The Landlord may place and maintain for sale and for rent signs on the Premises.

19. VACATING. (a) The Tenant shall surrender vacant possession of the Premises on or before the end of the term. Time is of the essence in complying with the preceding sentence. (b) On vacating the Premises, the Tenant shall see that all utilities are paid in full and disconnected (unless other arrangements are made with the Landlord), that the Premises (including, if applicable, plumbing fixtures, stoves, refrigerators, and sinks) are clean, that the doors and windows are closed and locked, and that all other provisions of this Lease are complied with. So that Landlord may provide security to the Premises after the Premises are vacant and may use the Premises for its purposes, Tenant shall notify Landlord in advance of the expected date that the Premises will become vacant and shall also notify Landlord within one working day after the Premises actually become vacant. This subsection "b" applies even if Tenant vacate before the end of the

term. (c) If the Tenant fails to comply with its obligations under this section, Tenant shall be liable for resulting damages suffered by the Landlord, including, if applicable, the inability to use the Premises for the purposes for which the Landlord has provided notice to the Tenant, which notice may be given before or during the term.

20. DEFAULT. (a) If the Tenant fails to pay the rent when due or fails to perform any other material obligation under this Lease, or if a material purported fact in the Tenant's rental application is substantially false, or if a bankruptcy case designating Tenant as a debtor is commenced or Tenant is made the subject of insolvency proceedings, and such failure, event, or condition continues for thirty (30) days after notice of such failure, event, or condition is sent, then the Landlord may at any time (i) terminate this Lease and cause the Tenant's estate to be ceased, or (ii) terminate the Tenant's right to possession of the Premises without causing the Tenant's estate to be ceased or terminating this Lease. In either event, the Tenant shall deliver possession of the Premises to the Landlord. In addition, the Landlord may reenter and take possession in accordance with legal procedures. If the Landlord terminates this Lease, the Tenant shall be liable for accrued rent, damages resulting from the Tenant's breach, and other accrued obligations and liabilities. If the Landlord terminates the Tenant's right to possession without terminating the Lease, this Lease shall remain in effect, and the Landlord shall make reasonable efforts to re-let the Premises on the Tenant's behalf. Tenant shall compensate the Landlord for the costs and expenses of such efforts. (b) The Landlord's waiver of or failure to exercise or enforce any of its rights under this Lease shall not constitute a waiver of any right thereafter. The Landlord's rights under this section are in addition to other rights under this Lease or as provided by law.

21. INDEMNIFICATION. (a) To the maximum extent allowed by law, Tenant shall defend, indemnify, and save harmless Indemnitees from and against all Charges that arise in any manner from, in connection with, or out of this Lease or out of the use or Occupancy of the Premises pursuant to this Lease, including for Environmental Contamination. In performing its duties under this subsection "a", Tenant shall at Tenant's sole expense defend Indemnitees with legal counsel reasonably acceptable to Landlord. (b) Definitions. As used in subsections "a" and "c" of this section – "Charges" means claims, judgments, costs, damages, losses, demands, liabilities, obligations, fines, penalties, settlements, and expenses (included within "Charges" are interest and reasonable attorneys' fees assessed as part of any such item). "Environmental Contamination" means petroleum products (including oil, gasoline, and kerosene), hazardous wastes, hazardous substances, hazardous materials, toxic substances, toxic wastes, hazardous air pollutants, and toxic pollutants, as those terms are used in any federal, state, or local laws, rules, regulations, codes, and ordinances, as amended from time to time. "Indemnitees" means Landlord and its officers, officials, independent contractors, agents, and employees, and does not include Tenant. © Limitations of Tenant's Obligation. Subsection "a" of this section shall not require Tenant to indemnify or hold harmless Indemnitees against liability for damages arising

out of bodily injury to persons or damage to property proximately caused by or resulting from the negligence, in whole or in part, of Indemnitees.

22. ADA. If Tenant receives any notice or document (i) which alleges any violation of the Americans with Disabilities Act (“ADA”) relating to the Premises, or (ii) which pertains to any claim made or threatened relating to the Premises regarding alleged noncompliance with the ADA, or (iii) which pertains to any governmental or regulatory action or investigation instituted or threatened relating to the Premises regarding alleged noncompliance with the ADA, Tenant shall, within ten (10) days after receipt of such notice or document, provide the Landlord with a copy.

23. TERMINATION, CASUALTY, AND EMINENT DOMAIN. (a) If the term ends early, and if Tenant has paid rent in advance, it shall be entitled to a prorated refund for the rent attributable to the time after the end of the term. (b) If fire or other casualty renders the Premises uninhabitable, and if the casualty is not the fault of Tenant or any person for whose acts or omissions Tenant is liable, and if Landlord cannot or does not make the Premises reasonably useable for Tenant’s purposes within ten days afterwards, Tenant may, by sending notice to the Landlord within fifteen days of the casualty, terminate the term effective as of the date of the casualty. (c) If fire or other casualty substantially damages the Premises, and if the casualty is not the fault of Tenant or any person for whose acts or omissions Tenant is liable, and if Landlord cannot or does not substantially repair the Premises within twenty days afterwards, Tenant may, by sending notice to the Landlord within twenty-five days of the casualty, terminate the term effective as of the date of the casualty. (d) If fire or other casualty renders the Premises unusable for the Tenant’s purposes, the Landlord may, by sending notice to the Tenant within twenty days of the casualty, terminate the term effective as of the date of the casualty. © If an authority with the power of eminent domain acquires an interest in the Premises that substantially affects their use for Tenant’s purposes, Tenant may, by sending notice to the Landlord within thirty days of the taking of possession by the authority, terminate the term effective as of the date of the taking of possession by the authority. (f) Each subsection of this section is intended to be independent of the other subsections of this section.

24. EFFECTS ON OTHER RIGHTS. The Landlord shall not be liable for any loss or damage occurring to the personal property of Tenant, except through the intentional act of the Landlord, and except as otherwise provided by law or this Lease. Nothing in this Lease shall limit the City of Durham’s governmental powers regarding the Premises, including eminent domain, zoning, subdivision, and police.

25. RENEWAL. Inapplicable.

26. ADDRESSES. NOTICES. Notices to the Tenant shall be in writing and sent to the Premises and to:

P.O. Box 1225  
Durham, NC 27702

Notices to the Landlord shall be in writing, and such notices and rent payments shall be sent to:

City of Durham  
101 City Hall Plaza  
Durham, NC 27701  
General Services  
Real Estate Division

By sending a notice stating its new address, either party may change the address to which notices or rent may be sent.

27. INTERPRETATION. Unless the context requires otherwise, the singular includes the plural, and vice versa. “Including” and “included” mean including or included but not limited to. Section headings are not for interpretation of this Lease. In Section 2 (TERM), if the period stated conflicts with the expiration date stated, the period shall control. In case of conflict, Section 21© (INDEMNIFICATION) controls over Section 8 (b) (CONDITION OF PREMISES AND REPAIRS), which in turn controls over Section 8(c)(CONDITION OF PREMISES AND REPAIRS).

IN WITNESS WHEREOF, the parties executed this Lease as of the date written above.

**LANDLORD:**

CITY OF DURHAM

ATTEST:

\_\_\_\_\_  
Clerk

By: \_\_\_\_\_  
City Manager

THE DURHAM BICYCLE COOPERATIVE

**TENANT:**

By: \_\_\_\_\_  
\_\_\_\_\_, Treasurer

State of \_\_\_\_\_ ACKNOWLEDGMENT BY CORPORATION

County of \_\_\_\_\_

I, a notary public in and for the aforesaid county and state, certify that

\_\_\_\_\_ personally appeared before me this day and stated that she is Treasurer of THE DURHAM BICYCLE COOPERATIVE, a corporation, and that by authority duly given and as the act of the corporation, he or she signed, under seal, the foregoing contract or agreement with the City of Durham. This the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

My commission expires: \_\_\_\_\_

\_\_\_\_\_ Notary Public





